Supreme Court, U. S.
FILED
APR 11 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1979

NO. 79-1595

WILLIAM HARRIS SHARPE,
Petitioner,

V.

THE STATE OF FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE FIRST DISTRICT COURT OF APPEALS FOR THE STATE OF FLORIDA

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THIS CASE PRESENTS NOVEL ISSUES DEALING WITH THE AUTHORITY OF ADMINISTRATIVE PERSONNEL TO SEARCH AND SEIZE VEHICLES FOR PURPOSES OF AGRICULTURAL INSPECTION, ABSENT ANY REASONABLE SUSPICION THAT THE VEHICLE WAS CARRYING AGRICULTURAL PRODUCTS AND THE AUTHORITY OF LAW ENFORCEMENT OFFICIALS TO EFFECT AN ARREST, ABSENT ANY KNOWLEDGE OR SUSPICION THAT ANY ILLEGALITY HAS TAKEN PLACE. REVIEW IS NECESSARY TO BRING TO THIS COURT'S ATTENTION A PRECEDENT SETTING ERROR OF THE FIRST DISTRICT COURT OF APPEALS FOR THE STATE OF FLORIDA, CONCERNING THE CRITICAL QUESTION OF THE ALLOWABLE SCOPE AND DEGREES OF DETENTION AND INTRUSION PERMISSIBLE UNDER THE FOURTH AMENDMENT PURSUANT TO ADMINISTRATIVE SEARCHES AND SEIZURES OF VEHICLES. REVIEW IS FURTHER NECESSARY TO REVIEW THE CRITICAL QUESTION OF WHETHER

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PETITION FOR WRIT OF CERTIORARI TO THE FIRST DISTRICT COURT OF APPEALS FOR THE STATE OF FLORIDA

The Petitioner, WILLIAM HARRIS SHARPE, respectfully asks that a Writ of Certiorari issue to review the judgment and opinion of the First District Court of Appeals for the State of Florida.

OPINIONS BELOW

On April 17, 1979, the First District Court of Appeals for the State of Florida affirmed the judgment of the Circuit Court for Hamilton County. See Appendix A. On or about April 26, 1979, the Petitioner filed a Petition for Rehearing in the Florida District Court which was denied on May 21, 1979. See Appendix B. On or about May 24, 1979, Petitioner filed his Motion to Certify

Questions to the Florida Supreme Court with the First District Court of Appeals for the State of Florida which granted the Motion on June 6, 1979, certifying two questions to be of great public interest. Petitioner timely filed his Petition for Certiorari in the Florida Supreme Court, which was denied on January 14, 1980. See Appendix C.

JURISDICTION

Jurisdiction of this appeal is grounded in an April 17, 1979 decision of the First District Court of Appeals for the State of Florida and the denial of the Petition for Certiorari by the Florida Supreme Court on January 14, 1980. The statutory provision conferring jurisdiction for this appeal is 28 U.S.C. 1257.

QUESTIONS PRESENTED FOR REVIEW

1. Whether Petitioner's Fourth Amendment right to be free from an unreasonable search and seizure was violated when he was detained for an extended period of time by administrative officials despite the lack of any articulable suspicion that the vehicle which Petitioner was driving was being used to transport agricultural products.

2. Whether Petitioner's Fourth Amendment right to be free from an unreasonable search and seizure was violated when his truck and its contents were searched by administrative officials without a search warrant when there was no articulable suspicion that the vehicle contained or was used to transport agricultural products; where Petitioner gave no consent to allow the search of his vehicle; and where no abandonment occurred prior to the search.

3. Whether Petitioner's Fourth Amendment rights were violated when he was arrested without probable cause

and when his truck was searched subsequent to this illegal arrest by local police authorities.

4. Whether Petitioner's Fourth Amendment rights were violated when Sheriff's officers conducted a second search of his vehicle, without a warrant; where there was no probable cause to search; and where there was no exigent circumstances.

CONSTITUTIONAL PROVISION INVOLVED

Fourth Amendment, United States Constitution:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

PREFATORY STATEMENT

All references to the record in this case will be preceded by the capital letter "R"; references to the transcript of the Motion to Suppress Hearing will be preceded by the capital letter "T".

STATEMENT OF THE CASE

Petitioner was charged with violating state laws of Florida, in that he possessed more than one hundred pounds of cannabis and in that he attempted bribery. Petitioner filed a Motion to Dismiss the Information, alleging numerous insufficiencies in the Information, and a Motion to Suppress, alleging the warrantless search of his truck was in violation of his Fourth Amendment rights. On October 24, 1977, the Motion to Dismiss and the Motion to Suppress were denied. At trial, Petitioner was

acquitted of the bribery charge, but was convicted of the possession charge. Petitioner filed a Motion for a New Trial which was denied orally on December 5, 1977 and by written order dated December 9, 1977. An appeal was taken to the First District Court of Appeals for the State of Florida, which affirmed the judgment on April 17, 1979. On April 26, 1979, the Petitioner filed a Petition for Rehearing in the Florida District Court, which was denied on May 21, 1979. On May 24, 1979, Petitioner filed his "Motion to Certify Questions to the Florida Supreme Court" which was granted by the First District Court of Appeals for the State of Florida on June 6, 1979, certifying two questions to the Florida Supreme Court to be of great public interest. However, on January 14, 1980, the Supreme Court of Florida denied Petitioner's writ of certiorari, and stated that no petition for a rehearing would be entertained. On March 11, 1980, Petitioner filed with this Court a Motion to Stay the Mandate of the Florida District Court of Appeals and Judgment of the Florida Circuit Court and Motion for Enlargement of Appellant's Bond Already In Force. This motion was denied on March 24, 1980.

Petitioner respectfully submits the following chronology with respect to the "search and seizure" issue presented here.

On the evening of March 19, 1977, William Harris Sharpe, Petitioner, was driving a Ryder Rental Truck north on Interstate 75 in the State of Florida. (T-36) Approximately twenty-five miles south of the Georgia border, the Petitioner voluntarily entered an inspection station maintained by the Florida Department of Agriculture (T-36). No one was traveling with him at the time. (T-36).

Upon entry into the inspection station, he was approached by a uniformed inspector, (T-49) who stated that, "I would like to take a look inside your truck if you don't mind." (T-34). The purpose of this request was to ascertain whether the truck contained agricultural products. (T-41). Petitioner responded that he was unable to open the truck, since the key to the padlock, was in the possession of his girlfriend, who was traveling ahead of him. (T-36). Petitioner further stated that the truck contained furniture from his girlfriend's apartment (T-51), which he was helping move.

The inspector refused to allow Petitioner to continue his northward journey, because he had not had an opportunity to look inside the truck, (T-53) despite the fact that he had no reason whatsoever to believe that Petitioner had anything but furniture in the vehicle. (T-52). Shortly thereafter, the agricultural inspector informed Petitioner that, "we can get a hammer for you if you would like to break it" (the lock) (T-53). Petitioner replied that it was a brand new lock and that he did not wish to damage it. (T-55). Another uniformed inspector told Petitioner that, it could be a long wait and that the truck would have to stay in the inspection station until it was searched. (T-71).

At least ten minutes later, (R-20) the inspectors observed that the back of Petitioner's vehicle was open. Petitioner was observed standing next to it. (T-39). The first inspector who initially approached Petitioner looked into the vehicle and observed furniture, an old motorcycle and an old tire. (T-56). At no time, did he observe any agricultural products or contraband. (T-59). After observing these items, he physically entered the truck in order to further search it. (T-57). This was the first search

which uncovered no contraband or agricultural products in the truck.

Shortly thereafter, the inspector heard another inspector call to him that the Petitioner was gone. (T-58). The first inspector stated he did not know why the Petitioner had left (T-59) and that during the time the truck was being searched, he had no idea that any contraband or agricultural products were in the truck. (T-59). The other inspector agreed, that even after seeing Petitioner leave, he had no reason to believe that Petitioner had done anything wrong. (T-68). He further stated that from looking at the contents of the truck, but without entering it, the truck contained nothing that concerned the Florida Department of Agriculture. (T-72).

Without further searching the vehicle, the inspector contacted the Florida Highway Patrol and the Hamilton County Sheriff's Office. (T-58-60). Shortly thereafter, a deputy sheriff took the Petitioner into custody and took him directly to the Hamilton County Jail. (T-82). Another deputy sheriff took possession of the truck and drove it to the jail. (T-74). Up to this time, no one from the Sheriff's Office had entered the truck, (T-75) and no contraband had been found. The deputy sheriff who transported the truck stated that he did not know why it was carried to the jail. (T-75).

Petitioner was at the jail when the truck arrived. (T-82). Without conferring with Petitioner in any way, the truck was opened, searched and a controlled substance was seized. No search warrants had ever been obtained for either the agricultural inspectors' or the sheriff's department search. (T-78).

REASON FOR GRANTING THE WRIT

THIS CASE PRESENTS NOVEL ISSUES DEALING WITH THE AUTHORITY OF ADMINISTRATIVE PERSONNEL TO SEARCH AND SEIZE VEHICLES FOR PURPOSES OF AGRICULTURAL INSPECTION, ABSENT ANY REASONABLE SUSPICION THAT THE VEHICLE WAS CARRYING AGRICULTURAL PRODUCTS AND THE AUTHORITY OF LAW ENFORCEMENT OFFICIALS TO EFFECT AN ARREST, ABSENT ANY KNOWLEDGE OR SUSPICION THAT ANY ILLEGALITY HAS TAKEN PLACE. REVIEW IS NECESSARY TO BRING TO THIS COURT'S ATTENTION A PRECEDENT SETTING ERROR OF THE FIRST DISTRICT COURT OF APPEALS FOR THE STATE OF FLORIDA, CONCERNING THE CRITICAL QUESTION OF THE ALLOWABLE SCOPE AND DEGREES OF DETENTION AND INTRUSION PERMISSIBLE UNDER THE FOURTH AMENDMENT PURSUANT TO ADMINISTRATIVE SEARCHES AND SEIZURES OF VEHICLES. REVIEW IS FURTHER NECESSARY TO REVIEW THE CRITICAL QUESTION OF WHETHER PROBABLE CAUSE EXISTS TO JUSTIFY AN ARREST, ABSENT ANY INFORMATION TO SUGGEST THAT ANY ILLEGALITY HAS OCCURRED. THESE ISSUES ARE OF EXCEPTIONAL IMPORTANCE SINCE THEY DEAL WITH CONSTITUTIONAL LIMITATIONS ON GOVERNMENT SPONSORED DETENTIONS AND SINCE THE ISSUES INVOLVED HEREIN HAVE NEVER BEEN DIRECTLY ADDRESSED BY THIS COURT.

A. PETITIONER'S FOURTH AMENDMENT RIGHT

TO BE FREE FROM AN UNREASONABLE SEARCH AND SEIZURE WAS VIOLATED WHEN HE WAS DETAINED FOR AN EXTENDED PERIOD OF TIME BY ADMINISTRATIVE OFFICIALS DESPITE THE LACK OF ANY ARTICULABLE SUSPICION THAT THE VEHICLE WHICH PETITIONER WAS DRIVING WAS BEING USED TO TRANSPORT ARGICULTURAL PRODUCTS.

Under the Fourth Amendment, an individual has a right to be free from unreasonable searches and seizures. Reasonableness is measured by balancing the intrusion against the promotion of legitimate government functions. *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976). As part of considering this equation with regard to warrantless searches of motor vehicles, (which does constitute a search within a meaning of the Fourth Amendment, *Delaware v. Prouse*, 440 U.S. 648 (1979)), it is necessary not only to consider the government interest at hand, but the degree of intrusion upon the individual, *Almeida-Sanchez v. United States*, 413 U.S. 283 (1973), and the degree of discretion left with the official who seeks to effect the stop. *Cady v. Dombrowski*, 413 U.S. 433 (1973). Due to the inherent flexibility in the concept of reasonableness this Court has enunciated a unique standard of measuring the propriety of searches and seizures by administrative officials. This Court has not addressed itself, however, to the novel issue of administrative searches and seizures of motor vehicles, as is presented in the case at hand.

Administrative searches and seizures are subject to the Fourth Amendment, *Michigan v. Tyler*, 436 U.S. 499 (1978) although to justify a search or seizure, "probable cause in the criminal law sense is not required." *Marshall*

v. Barlow's, Inc., 436 U.S. 307, 320 (1978). Instead a determination must be made as to whether the reasonable legislative or administrative standards for conducting an administrative inspection are satisfied with respect to the particular premises to be searched. *Camara v. Municipal Court*, 387 U.S. 523 (1967).

The rationale for allowing this unique standard for administrative searches was to permit the smooth implementation of regulatory schemes. As noted however, the Fourth Amendment standard of reasonableness continued to apply, so that while searches and siezures were based on a lesser standard of justification than probable cause, it was necessary that they be "relatively limited invasions" of privacy, *Camara v. Municipal Court, supra* at 537 and "limited in scope and relative in purpose." *See v. Seattle*, 387 U.S. 541, 544 (1967). In determining the justification of the intrusion, it is also proper to consider whether the seizure interferes with the person's freedom of movement, and if so, how much time was consumed and whether the person was inconvenienced by the detention. *Delaware v. Prouse, supra* at 658.

In the case at hand, Petitioner voluntarily entered an agricultural and weight station pursuant to Florida Statute 570.15, which states that Florida agricultural officials may have access to truck and motor vehicle trailers which are used "in the production, manufacture, storage, sale, or transportation within the state of any food product; any agricultural, horticultural or livestock product; or any article or product with respect to which any authority is conferred by law on the department." It is noteworthy, that subsequent to the search and seizure in question, this statute was amended by the Florida legislature. This new statute now gives Florida officials the right to indefinitely

detain any vehicle, until a search of said vehicle has been made.

When Petitioner entered the agricultural station, he told the inspectors that his truck contained no agricultural products but instead contained furniture. (T-51). The agricultural officials were denied access to the cargo area of the truck, due to the Petitioner's lack of a readily available key. (T-36). Thereafter, the inspectors refused to allow the Petitioner to continue his journey, although they had no reason whatsoever to believe that Petitioner had anything but furniture in his truck. (T-52).

The Florida Appellate Court, in its opinion, viewed the behavior of the agricultural inspectors as within the confines of the Fourth Amendment, holding that the state agricultural commission has the authority to detain all trucks until they have been physically inspected. Petitioner asserts that such authority granted to an administrative agency exceeds the limits of reasonableness as contemplated by the Fourth Amendment, and as such is illegal, so as to authorize the suppression of any evidence obtained pursuant to that seizure. *Wong Sun v. United States*, 371 U.S. 471 (1963).

Petitioner contends that those detentions which exceed the limits of reasonableness can no longer be justified on administrative grounds. Such detentions must then be measured by the same standards which apply in criminal cases. The case of *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) is instructive. There the border patrol had constructed a permanent checkpoint for the purpose of detaining illegal aliens. The procedure used at the checkpoint was found to be acceptable, but the Court limited the extent of the seizure. Thus, the border patrol

could:

1. Require a vehicle to stop at a border patrol checkpoint.

2. Briefly detain the travelers during which time all that is required of them is a response to a brief question or two or possibly the production of a document evidencing the right to be in the United States.

3. Visually inspect the vehicle (but limiting that inspection to what could be seen without a warrant).

4. Refer motorists selectively to a secondary area for questioning only if there is something suspicious about the particular vehicle passing through the checkpoint, but then only for a few brief questions about citizenship and immigration status.

Applying the logic of this decision to the case at hand, the State of Florida would have had the authority to require the Petitioner to stop and would have been entitled to inquire as to the contents of the truck. However, absent probable cause in the form of specific and articulable facts that the truck contained agricultural products, they would have had no authority to detain the Petitioner. The record is clear that no such suspicion existed. The agricultural inspector testified that he had no reason to believe that Petitioner's truck carried anything but furniture. (T-52).

Numerous criminal cases, have dealt with the degree of proof necessary to justify a continuing detention. In *Terry v. Ohio*, 392 U.S. 1, 21 (1968), this Court stated that "specific and articulable facts" were necessary to justify even a short detention. In *Brown v. Texas*, ____ U.S. ____, 61 L.Ed. 2d 357, 362 (1979), this Court required that a detention must be based on "specific, objective" facts,

concerning specific misconduct and rejected a contention that an intrusion could be justified if a party "looked suspicious". It is significant that both *Terry v. Ohio, supra,* and *Brown v. Texas, supra,* involve short detentions.

As noted, administrative searches and seizures are unique in that they may be based on less than probable cause, since they are presumably less intrusive. Petitioner does not dispute the authority of the state to briefly detain vehicles to determine if they contain agricultural products. Petitioner does dispute however, the authority of administrative officials to subject all trucks to an extended detention, absent any specific knowledge or articulable suspicion that the vehicles' contents are subject to administrative regulation by the agency in question.

When considering the state's interest in regulating the transfer of agricultural products inside the State of Florida, it is necessary to consider the unique factual setting in which the seizure in question took place. Virtually all of the leading administrative search and seizure cases considered by this Court have involved situations in which the administrative officials knew that the premises which they sought to search contained something within, which was subject to the regulatory authority. In *Marshall v. Barlow's, Inc., supra,* the inspector was aware that the inside of the premises was subject to the provisions of the Occupational Safety and Health Act. Likewise, in *See v. Seattle, supra,* there was no doubt that the premises sought to be inspected were subject to the fire regulations of the City of Seattle. The case at hand, however, is different in that the agricultural inspectors had no reason to believe that the truck in question contained agricultural products. This lack of knowledge, then makes this case ripe for review by this Court, as here the administrative agency

in question, had no reason to believe that they would find those items for which they were authorized to conduct an inspection.

Delaware v. Prouse, supra, concerned the administrative detention of motor vehicles. There a policeman stopped a vehicle for purposes of a spot license registration check. This court found such a practice to be illegal, as there existed no, "appropriate factual basis for suspicion directed at a particular vehicle" at 660. Such a standard, more stringent than the standard enunciated in other administrative search cases, was necessary because of the extent of the intrusion and because it left too much discretion in the hands of the arresting authority. As the court noted at 660, "the grave danger of abusive discretion, does not disappear simply because the automobile was subject to the State regulation resulting in numerous instances of police citizen contact."

The intrusion in the case at hand, was "inconvenient", "consumed time", and significantly interfered with the Petitioner's "freedom of movement". Furthermore, the seizure was not "limited in scope and relevant in purpose," *See v. Seattle, supra,* since the administrative officials here saw fit to detain a vehicle, absent any information whatsoever to suggest that the vehicle detained was subject to the administrative regulation which formed the basis of the detention. Finally, in suggesting that the agricultural commission is entitled to a physical search of all trucks, the state asserts that they are able to subject all trucks to an extended detention, a clear contradiction of the Fourth Amendment requirement that administrative seizures be relatively limited invasions of privacy.

Under the rule propounded by the Florida Appellate Court, the state should be allowed to physically inspect

all vehicles for the purposes of administrative efficiency and refusal of a citizen to permit that extensive intrusion should give them authority to detain a vehicle and the citizen indefinitely. Such a rule of course would give the state agricultural commission not only the right to make seizures on less than probable cause "in the criminal sense", but allow them to make seizures more intrusive than those necessary to accomplish their administrative function. In such circumstances, the anticipated tradeoff between the lesser justification needed to conduct an administrative search and the lesser degree of intrusiveness of an administrative search and seizure would become nonexistent. The practical result would be that all seizures and subsequent searches would become reasonable. Such a result is contrary to the Fourth Amendment and accordingly the evidence seized as a result of the illegal detention should have been suppressed.

B. PETITIONER'S FOURTH AMENDMENT RIGHT TO BE FREE FROM AN UNREASONABLE SEARCH AND SEIZURE WAS VIOLATED WHEN HIS TRUCK AND ITS CONTENTS WERE SEARCHED BY ADMINISTRATIVE OFFICIALS WITHOUT A SEARCH WARRANT WHEN THERE WAS NO ARTICULABLE SUSPICION THAT THE VEHICLE CONTAINED OR WAS USED TO TRANSPORT AGRICULTURAL PRODUCTS; WHERE PETITIONER GAVE NO CONSENT TO ALLOW THE SEARCH OF HIS VEHICLE; AND WHERE NO ABANDONMENT OCCURRED PRIOR TO THE SEARCH.

Permissible searches under the Fourth Amendment are limited to those which are reasonable. In criminal cases, probable cause must exist before a search can be reason-

able. Absent exigent circumstances, a search warrant is necessary to effectuate a search and seizure, as absent a warrant all searches are presumed to be unreasonable. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). One function of a warrant, which seeks to insure "reasonableness", is the requirement limiting the allowable scope of a search, so that it remains "strictly tied to and justified by the circumstances which rendered its initiation permissible." *Terry v. Ohio*, 392 U.S. 1, 19 (1968), citing *Warden v. Hayden*, 387 U.S. 294, 310 (1967) (Mr. Justice Fortas, concurring).

Administrative searches are subject to the authority of the Fourth Amendment, *Michigan v. Tyler*, 436 U.S. 499 (1978) and thus normally require a search warrant absent consent. *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978). Accordingly, they are limited in scope by the prescriptions of the Fourth Amendment. While it is well recognized, that such seizures can be based on a lesser standard than those necessary to justify a criminal search, *Marshall v. Barlow's, Inc., supra*, the Fourth Amendment requirement of reasonableness remains, so that the legitimacy of each search must be reviewed on a case by case basis. Thus in each case, there must be a balancing of the specific enforcement needs of each statute justifying an administrative intrusion and the individual's privacy guarantees infringed upon. *Marshall v. Barlow's, Inc., supra.*

Accordingly, the scope of searches made by administrative personnel is limited by the purposes of the search in question. This is implicit in the concept allowing a search based on "less than probable cause in a criminal sense," because such searches involve a relatively limited invasion of the citizen's privacy, since, "the inspections are neither personal in nature nor aimed at the discovery of

evidence of crime." *Camara v. Municipal Court*, 387 U.S. 523, 527 (1967). Thus the standard needed to legitimize an administrative search is lessened, since such a search involves a lesser degree of intrusion.

Because a lesser degree of intrusion is justified under the administrative search guidelines, a search warrant is invariably preferred absent consent. As the Court in *Michigan v. Tyler*, 436 U.S. 499, 508 (1978), noted, "when the inspector demands entry (without a warrant), the occupant has no way of knowing whether enforcement of the . . . code requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search and no way of knowing whether the inspector himself is acting under proper authorization." Implicit in this preference for a warrant is the fear that administrative officials in the field would possess almost unbridled discretion to exceed the permissible limits of an administrative search. *Marshall v. Barlow's, Inc., supra* at page 324.

In the case at hand, a search of the contents of the Petitioner's truck was conducted after the Petitioner had been involuntarily detained and absent a warrant. The search was conducted by Florida agricultural officials, (T-56) for the purpose of ascertaining whether the vehicle in question contained any agricultural products. (T-41). Under the Florida Statute 570.15, the officials in question were entitled to search vehicles used in the agricultural business, and thus the intrusions were to be confined to searching for agricultural products.

Upon looking in the rear of the truck, the inspector in question noticed that the truck contained furniture an old motorcycle, and possibly an old tire. (T-56). Petitioner had previously informed the inspector that the truck contained furniture. (T-52). At no time did the

inspector ever observe *any agricultural products* or *contraband* in the truck. (T-59). Another inspector, who observed the contents of the truck, while standing on the road near the tailgate of the truck, testified at the Motion to Suppress Hearing, that the contents of the truck were nothing that concerned the Florida Department of Agriculture. (T-72). Nevertheless, the first inspector proceeded to physically enter the truck although he had no reason to believe that the truck contained any items subject to the authority of the Florida Department of Agriculture. This first search was conducted, because the thought entered the mind of the inspector that the Petitioner might not be telling the truth. (T-57).

The Florida Appellate Court interpreted the relevant statute as allowing a search of all trucks, regardless of whether reasonable suspicion existed to justify belief that the vehicle contained agricultural products. Such a procedure for inspection, absent a warrant, violates this Court's decision in *Marshall v. Barlow's, Inc., supra,* that a warrant be obtained. Under *Marshall,* a neutral magistrate should be interjected to assure that a search, "is reasonable under the Constitution" and is "pursuant to an administrative plan containing specific criteria." Absent such a warrant, the possibility exists that the scope and purpose of a search will be exceeded and thus become unreasonable.

A warrant would have been appropriate in the case at hand, for purposes of requiring the state to justify the search, and if issued, to limit the scope of the search to a determination as to whether agricultural products were present. Instead, no warrant was issued and the inspectors were given "unbridled discretion" to arbitrarily search Petitioner's vehicle, absent any reason to believe that the

vehicle in question contained agricultural products.

Furthermore, once having gone forward with the search by looking inside the vehicle, they proceeded to physically enter the truck despite the fact that no agricultural products were apparent and despite the fact that the visible contents of the truck coincided with the description provided by the Petitioner. This physical entry, certainly not for the purpose of discovery of agricultural products, was rationalized on the ground that the inspector in question "felt" that the Petitioner might not be telling the truth and not on the basis of any articulable suspicion that any Florida law or regulation was being violated. An "inarticulable hunch" provided the basis for the physical entry of the truck. This was clearly outside the permissible scope of an administrative search, since prior to entry into the truck the inspectors observed that the truck contained nothing which concerned the Florida Department of Agriculture.

The physical entry into the truck and the search of the truck's contents violates Petitioner's rights, since no possible probable cause to search existed at that time. In fact, as already stated any suspicion that agricultural products were contained within the truck, were negated by the "look inside" the truck.

The Florida Appellate Court bypassed the issue of whether or not the initial detention of Petitioner's vehicle was legal and assumed legality. Thus, that Court could not properly reach an opinion as to whether Petitioner's consent to search his vehicle was given.

A party may consent to waive its Fourth Amendment rights to be free from an unreasonable search and seizure. Such a consent, however, must be a voluntary relinquishment of a known right, *Schneckoloth v. Bustamonte*, 412

U.S. 218 (1973) and must not be the product of coercion offered by those with the cloak of authority. *Bumper v. State of North Carolina,* 391 U.S. 543 (1968). The government of course may not benefit from its own illegality, *Wong Sun v. United States,* 371 U.S. 471 (1963) and if illegality is detected by the government which is directly related to the consent in question, such illegality must be included in a determination of the voluntariness of the consent.

In the case at hand, the Petitioner was subject to extensive restraint and detention before apparently opening the doors of the truck. Prior to this time, Petitioner had denied inspection agents access to his vehicle (T-36). It was only after the Petitioner had been restrained and detained that the inspectors discovered that the tailgate doors of the truck were open. The illegal detention should have been considered in deciding the voluntariness of the consent, since as Petitioner noted, the government may not benefit from its own illegality. *Wong Sun v. United States, supra.*

It is also significant that the State did not prove "consent", and only showed that the doors to the truck were open. Therefore, at best, Petitioner consented to a "view" of the contents of the truck by opening the doors. Consent was never extended to include entry into the truck.

To summarize, no consent to search was expressly given and it was only after the Petitioner was informed that he might need to remain for an indefinite time and until a physical search was conducted, that officials noticed the doors to Petitioner's truck were open (T-71). This is certainly not an articulated and express consent as required by law. The agents in question were uniformed and cloaked in administrative authority (T-49). Thus, if the

authority to detain the truck was illegal (as Petitioner asserts herein) then it would prevent the Petitioner from having made a knowing voluntary consent of his Fourth Amendment rights.

As the consent given to the first search here was not voluntary, it is for purposes of the Fourth Amendment, equivalent to no consent at all. Accordingly, it cannot be argued that consent attenuated the primary illegality, since the consent was a direct product of said illegality and hence not voluntary.

Petitioner further asserts that the issue of abandonment of the vehicle in regard to the first search is irrelevant, since the Petitioner did not leave his vehicle until after the agricultural authorities had physically entered it. Accordingly, his standing to contest this search was intact at the time of this search.

Administrative officials are granted a lesser standard to justify their searches, precisely because they would be less intrusive. To allow those who conduct administrative searches, the degree of discretion which the Florida Appellate Court approved for the agricultural inspectors in this case would be to grant administrative agencies the right to conduct more expansive searches than those permitted in criminal situations, in which the state has a far greater interest. The opinion below authorizes agricultural inspectors to stop every truck and presumably search, without a warrant, all of its contents, whether or not they believed they contained agricultural products. Such unlimited discretion would allow searches of all trucks and place no limitation on the scope of such searches in direct violation of the Fourth Amendment. Accordingly, the state should have been required to obtain a search warrant to justify its intrusion and said warrant should have

limited the scope of any justifiable search (if any) to far below that which was effected by the Florida officials. Thus, the search was unreasonable and any evidence discussed pursuant to that search, including any evidence discovered pursuant to the alleged consent should be suppressed. *Wong Sun v. United States*, 371 U.S. 471 (1963).

C. THE PETITIONER'S FOURTH AMENDMENT RIGHTS WERE VIOLATED WHEN HE WAS ARRESTED WITHOUT SUFFICIENT PROBABLE CAUSE.

An arrest of an individual is a seizure for purposes of the Fourth Amendment and accordingly must be reasonable. The reasonableness of an arrest will depend on whether, "at the moment the arrest was made, the officers had probable cause to make it." *Beck v. Ohio*, 379 U.S. 89, 91 (1964). Probable cause exists when there is reasonably trustworthy information which is sufficient for a prudent man to believe that the individual in question had committed or was committing an offense. *Brinegar v. United States*, 338 U.S. 160, 175 (1948).

In order to properly review probable cause decisions made by law enforcement officers in the field, it is necessary to look to the totality of the circumstances as revealed by the record. *Beck v. Ohio, supra.* In the case at hand, Petitioner was arrested after he had left the area where his truck and he had been illegally detained. (T-82). At that time, no contraband had been found in the vehicle (T-75) and there was no evidence whatsoever that any sort of illegality had occurred. This is born out by the testimony of an agricultural inspector who had testified that even after having seen Petitioner leave, he had no reason to believe that Petitioner had violated the law. (T-68). The question to be considered then is whether the

arrest in question was justified by probable cause. If not, any evidence seized subsequent to and pursuant to said illegal arrest should have been suppressed. *Wong Sun v. United States*, 371 U.S. 471 (1963); *Brown v. Illinois*, 422 U.S. 590 (1975).

Brown v. Illinois, supra, is controlling here. In *Brown*, the defendant was arrested without probable cause and without a warrant. Thereafter, while in custody, he made two exculpatory statements. The Court held that these statements were to be excluded as the fruit of an illegal arrest. Reflecting on the illegality of the arrest, this Court stated:

> The impropriety of the arrest was obvious; awareness of that fact was virtually conceded by the two detectives when they repeatedly acknowledged, in their testimony, that the purpose of their action was "for investigation" or for "questioning". The arrest, both in design and in execution, was investigatory. The detectives embarked upon this expedition for evidence in the hope that something might turn up. (at 605).

The impropriety of the arrest in the instant case is as obvious as it was in *Brown, supra*. The State contends that the Petitioner fled from his truck and probable cause existed for his arrest. Flight, however, while a factor to be considered is, standing alone, insufficient to constitute probable cause. *United States v. Jacquillon*, 469 F.2d 380 (5th Cir. 1972). To be sufficient to constitute probable cause, it should be "coupled with specific knowledge on the part of the officer relating the suspect to evidence of crime". *United States Ex Rel Richardson v. Rundle*, 461 F.2d 860, 863 (3d Cir. 1962).

In the case at hand, the Petitioner was subject to a full arrest. At the time that officials began pursuit of the

Petitioner, there was no reason to suspect that Petitioner was involved in any sort of illegality. This was evidenced by the fact that once informed that the Petitioner had fled, the search of the vehicle ceased. Thus any contraband subsequently discovered during the second search at the Sheriff's station was unrelated to the pursuit and apprehension of the Petitioner. Accordingly, even if there was a vague suspicion of some illegality, it would have been impossible to state what specific crime was suspected, if any. Thus, any basis for pursuit and subsequent arrest could not have been sufficient for a prudent man to believe that Petitioner had committed or was committing an offense.

Petitioner apparently was subject to a full arrest. Absent any knowledge of criminal behavior by the State, probable cause was not present to either arrest defendant or search the truck a second time (when the contraband was ultimately found). Thus, the evidence discovered subsequent to arrest should have been suppressed. *Brown v. Illinois, supra.*

D. PETITIONER'S FOURTH AMENDMENT RIGHTS WERE VIOLATED WHEN SHERIFF'S OFFICERS CONDUCTED A SECOND SEARCH OF HIS VEHICLE, WITHOUT A WARRANT; WHERE THERE WAS NO PROBABLE CAUSE TO SEARCH; AND WHERE THERE WAS NO EXIGENT CIRCUMSTANCES.

Absent certain well recognized exceptions, a warrant issued by a neutral and detached magistrate is necessary to justify a search or seizure. In the case at hand no search warrant was issued to authorize the second search of the truck, which was conducted at the Hamilton County Jail. (T-78). Petitioner asserts that absent a warrant, no

probable cause and exigent circumstances justify the search.

The Florida Appellate Court in its opinion held that an abandonment of the truck in question had occurred, which authorized the search. Petitioner contends however that a valid abandonment did not occur in that (1) he was present on the same premises as the truck, when the second search took place and (2) any alleged abandonment on the part of Petitioner was involuntary and therefore did not constitute an abandonment for purposes of the Fourth Amendment.

The consideration of an "abandonment" necessitates an examination of all relevant circumstances existing at the time of the alleged abandonment of an item, *United States v. Manning*, 440 F.2d 1105, 1111 (5th Cir. 1971), in order to determine if the party in question retained a reasonable expectation of privacy in regard to it. *United States v. Colbert*, 474 F.2d 174 (5th Cir. 1973).

In the case at hand, Petitioner left his vehicle after agricultural authorities had physically entered it. Upon being advised that Petitioner was no longer present, the inspectors ceased their search, and the contraband in question was not discovered until a second search took place at the Hamilton County Jail. (T-74). Petitioner was present at the jail during this search having arrived prior to the truck (T-82). Thus, he was present on the premises, at the same time that his truck which was allegedly abandoned, was searched. By being present on said premises, Petitioner retained his reasonable expectation of privacy in his vehicle and no abandonment took place.

Petitioner further asserts that any alleged abandonment attributed to him here would be improper as his actions

were caused by and were the result of an illegal search and seizure. To be proper, an abandonment, must be voluntary. *Fletcher v. Wainwright*, 399 F.2d 62 (5th Cir. 1968); *United States v. Beck*, 602 F.2d 726 (5th Cir. 1979). Evidence will not be regarded as abandoned for purposes of the Fourth Amendment if the action in question was a result of illegality on the part of law enforcement officials since under such circumstances, said action could not be regarded as voluntary.

If this Court should find, that either the initial detention of the Petitioner, or the initial intrusion into the truck was illegal, then the State of Florida would have no justification for taking the vehicle into its possession. The taking of the vehicle into its possession would then have been an illegal act, as would have been the second search, during which the contraband was discovered.

Here, the Petitioner took no action to leave his truck prior to the time that the agricultural inspector entered the vehicle. (T-58). Once the inspector was physically inside the truck, the Petitioner left. (T-58). Petitioner asserts that there exists a causal relationship between the physical entry by the inspector and the Petitioner leaving the truck and that the alleged abandonment would not have occurred, but for the entry into the truck. Accordingly, abandonment does not provide justification for the second search of the truck as the abandonment was involuntary, being the product of law enforcement illegality.

As the abandonment here was not voluntary, it is for purposes of the Fourth Amendment, equivalent to no abandonment at all. Accordingly, it cannot be argued that any allowed abandonment attenuated the primary illegality since the alleged abandonment was a direct product of said illegality and hence not voluntary.

Even if the Court should find that no illegality existed in the search and seizure of the Petitioner's truck by the administrative officials in question and that the arrest of Petitioner is legal, the Court should still suppress the items seized pursuant to the second search.

No probable cause existed at the time of said search. *Carroll v. United States*, 267 U.S. 132 (1925) as the State lacked independent "specific and articulable facts" on which to base probable cause. Instead, at the time of the second search, there was no information to suggest that any illegality occurred.

Additionally, no exigent circumstances existed to justify the search. At the time of the search, the Petitioner was in custody and was traveling alone and the possibility of movement of the vehicle was non-existent as it was under the control of the Sheriff of Hamilton County. Furthermore, the vehicle could have been readily locked so as to safeguard its contents. In addition, the State had ample opportunity to seek a warrant, and as such should not be permitted to decide probable cause, instead of leaving that decision to a neutral magistrate. In this regard, it must be remembered that, "the word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." *Coolidge v. New Hampshire, supra.* Accordingly, a search warrant should have issued as absent such warrant no probable cause and no exigent circumstances existed. Thus any evidence seized pursuant to the second search should have been suppressed as the "fruits" of the primary illegalities which occured or alternatively as items seized during a warrantless search where no probable cause existed.

CONCLUSION

Based on the foregoing reasons, the Petitioner contends that the First District Court of Appeals for the State of Florida erred in its decision concerning the novel issue presented to it and misapplied controlling authority to the circumstances involved in Petitioner's situation. Thereafter, a Writ of Certiorari should issue to review the judgment of the First District Court of Appeals.

Respectfully submitted,

GARLAND, NUCKOLLS, KADISH,
MARTIN & CATTS, P.C.

By: Mark J. Kadish
MARK J. KADISH

1012 Candler Building
127 Peachtree Street
Atlanta, Georgia 30303
404/577-2225

CERTIFICATE OF SERVICE

This is to certify that I have this day served, the Attorney General, Tallahassee, Florida with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 11 day of April, 1980.

By: Mark J. Kadish
MARK J. KADISH

1012 Candler Building
127 Peachtree Street
Atlanta, Georgia 30303
404/577-2225

Appendices

APPENDIX A

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

WILLIAM HARRIS SHARPE, *Appellant,* vs STATE OF FLORIDA, *Appellee.*	NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED. CASE NO. II-183

Opinion filed April 17, 1979.

An Appeal from the Circuit Court for Hamilton County. Royce Agner, Judge.

Virlyn B. Willis, Jr., for Appellant.

Robert L. Shevin, Attorney General and Michael H. Davidson, Assistant Attorney General, for Appellee.

BOOTH, J.

This cause is before the Court on appeal from the judgment of the Circuit Court, Hamilton County, entered on a jury verdict finding Sharpe guilty of possession of more than 100 pounds of cannabis, and sentencing him to five years imprisonment and a ten thousand dollar ($10,000) fine. He urges as error the trial court's failure to suppress evidence taken in a search of his truck.

The facts are that Sharpe stopped his rental truck at an agricultural inspection station on an interstate highway, but when told by a uniformed inspector that he wished to inspect the vehicle, Sharpe advised that his

girlfriend had the key to the lock securing the rear door of the truck and she was driving another vehicle ahead of him on the highway. The inspector asked Sharpe what was in the truck and Sharpe answered that he had some furniture from his girlfriend's apartment. The inspector then requested Sharpe to pull his truck over to the dock and wait. At one point, the inspector suggested that if Sharpe couldn't get the truck open, and if his girlfriend didn't come back, that he could get a hammer for Sharpe to break the lock. Sharpe stated it was a new lock that he didn't want to break. He indicated his girlfriend would come back. At no time did Sharpe refuse to allow the truck to be searched.

Some minutes later the inspectors noticed that the back of the truck was open and Sharpe was standing next to it. One of the inspectors went over and looked inside the truck and observed furniture and an old motorcycle. Shortly after he entered the back of the truck to look further, he heard another inspector call that Sharpe was gone. Sharpe was seen running across an open field. At that point all inspection of the vehicle was stopped. The inspectors contacted the highway patrol and the sheriff's office. Shortly thereafter, Sharpe was taken into custody. A deputy drove the truck from the inspection station to the jail, where the truck was searched and the cannabis discovered.

Sharpe contends that despite the requirement of Florida Statute section 570.15(1)(a) that specified vehicles stop at agricultural inspection stations, the inspectors must allow such vehicles to pass *uninspected* absent a reasonable suspicion that agricultural products are being transported. It is his position that when he told the inspector that his vehicle contained furniture, and the inspector

had no reason to suspect otherwise, the inspector should have let his vehicle pass. Finally, he contends that he did not abandon his truck and therefore the search carried out by the sheriff's officers was illegal because it was done without a search warrant and without his valid consent. We must disagree with Sharpe's reasoning.

Florida Statute 570.15 provides in pertinent part as follows:

> "(1)(a) The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents, inspectors, road-guard inspection special officers, and other employees and officers of the department shall have full access at all reasonable hours to all:
>
> * * *
>
> 6. Trucks;
>
> 7. Motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag;
>
> 8. Truck and motor vehicle trailers;
>
> * * *
>
> used in the production, manufacture, storage, sale, or transportation within the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.
>
> (b) If such access be refused by the owner, agent, or manager of such premises or by the driver of such aforesaid vehicle, the inspector or road-guard inspection special officer may apply for a search warrant which shall be obtained as provided by law for the obtaining of search warrants in other cases, or may conduct a search of any of the aforesaid vehicles without a warrant pursuant to s. 933.19.

(c) Such departmental officers, employees, and road-guard inspection special officers may examine and open any package or container of any kind containing or believed to contain any article or product which may be transported, manufactured, sold, or exposed for sale in violation of the provisions of this chapter, the rules of the department, or the laws which the department enforces and may inspect the contents thereof and take therefrom samples for analysis.

(2) It shall be unlawful for any truck or any truck or motor vehicle trailer to pass any official road-guard inspection station without first stopping for inspection. A violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

Section 570.151 provides as follows:

"The department may appoint road-guard inspection special officers of sufficient number to carry out the duties of the department relating to road-guard inspection as prescribed in this section. Said officers shall be known as road-guard inspection special officers . . .

* * *

All such special officers shall have power and authority to make arrests, with or without warrants as provided in s. 570.15, for violations of law committed within the jurisdiction of s. 570.15 to the same extent and under the same limitations and duties as do peace officers under the provisions of chapter 901, and all such special officers shall have the right and authority to carry arms while on duty, provided such officers shall meet the requirements of the Police Standards and Training Commission established under s. 943.11 . . ."

The State in the reasonable exercise of its police power has required agricultural inspections of specified vehicles

operated on the highways of the State. In *Stephenson v. Department of Agriculture and Consumer Services*, 329 So.2d 373 (Fla 1st DCA 1976), affirmed 342 So.2d 60 (Fla 1976), this Court so held and ruled further:

> "The inspections are necessary in order that appellee [Department of Agriculture and Consumer Services] may carry out its responsibilities relating to disease control, fruit and vegetable grading and other similar matters required by law, appellee's regulations and federal marketing orders. Under subsection (2) of section 570.15 above, all trucks and motor vehicle trailers [not limited to those mentioned in subsection (1)] are required to stop at appellee's road-guard inspection stations for inspection. Unless such a vehicle stops at the station, it cannot be determined by the inspectors whether or not it is being used for transportation of 'any food product, any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.' Upon stopping, the majority of operators of such vehicles will probably have no objection to such an inspection and will consent to same; but as provided in the statute, if access is refused, the vehicle may not be searched without the inspector obtaining a search warrant or without a legal basis for search without a warrant pursuant to established law. Such in no way impairs appellants' right to be free from unreasonable search and seizure, their right to due process of law, or their right to equal protection of the law. We do not find that it violates any constitution right of appellant." (329 So.2d at page 376)

The Supreme Court affirmed the *Stephenson* decision, quoting an earlier decision,[1] holding (342 So.2d 60, 61):

> "The protection of a large industry constituting one of the great sources of the state's wealth and there-

[1] *Johnson v. State*, 99 Fla. 1311, 128 So.2d 853 (Fla 1930).

> fore directly or indirectly affecting the welfare of so great a portion of the population of the state is affected to such an extent by public interest as to be within the police power of the sovereign."

Sharpe's contention that the agricultural inspectors should have limited their inspection of his truck to a few questions and a plain view search is devoid of merit. He was driving a two-ton rental truck with a large fully enclosed cargo area of the type customarily used as testified to by the inspectors, to haul fruit and tomatoes. The nature of the truck precluded any plain view inspection and, therefore, it was necessary for the inspector to look inside the truck's cargo area in order to perform his duty of inspecting for agricultural products. Therefore, we find that Sharpe's detention at the road-guard station was reasonable.

We find that Sharpe consented to the inspection of his truck and opened the truck of his own volition, *State v. Drake*, 343 So.2d 1336 (Fla 1st DCA 1977), and that his arrest was lawful following his having fled the scene after an inspection of the truck began. *City of Miami v. Nelson*, 186 So.2d 535 (Fla 3d DCA 1966); Florida Statute sections 570.151, 901.15.

Finally, we agree with the trial court that defendant abandoned his truck at the road-guard station. The subsequent impoundment of the abandoned truck was also reasonable, *Mattson v. State*, 328 So.2d 246 (Fla 1st DCA 1976), and the seizure of the evidence contained therein not improper. *State v. Jackson*, 240 So.2d 88 (Fla 3d DCA 1973); *State v. Nittolo*, 317 So.2d 748 (Fla 1975).

We have considered Sharpe's remaining points and find them without merit. Accordingly, the judgment and sentence appealed are AFFIRMED.

SMITH, Acting Chief Judge and MASON, ERNEST E., Associate Judge, CONCUR.

APPENDIX B

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

WILLIAM HARRIS SHARPE,
Appellant,
—vs—
STATE OF FLORIDA,
Appellee.

CASE NO. II-183

ORDER

Petition for Rehearing and Response thereto having been considered,

IT IS ORDERED that the petition is hereby denied.

By Order of the Court dated this 21st day of May, A. D. 1979. Unless otherwise ordered, the Court's mandate will issue fifteen (15) days after this date. Florida Rules of Appellate Procedure, 9.340; General Order entered April 14, 1978. Acting Chief Judge Robert P. Smith, Jr., Judge Anne C. Booth, and Associate Judge Ernest E. Mason.

A TRUE COPY
ATTEST:
RAYMOND E. RHODES, CLERK

/s/ Raymond E. Rhodes
District Court of Appeal, First District
Tallahassee, Florida

APPENDIX C

SUPREME COURT OF FLORIDA

MONDAY, JANUARY 14, 1980

WILLIAM HARRIS SHARPE, *Petitioner,* STATE OF FLORIDA, *Respondent.*	CASE NO. 57,012 District Court of Appeal, First District DCA CASE NO. II-183

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Fla. R. App. P. 9.120, and it appearing to the Court that it is without jurisdiction, it is ordered that certiorari is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

Petitioner's amended notice is hereby denied.

ADKINS, ACTING C.J., BOYD, OVERTON, SUNDBERG and ALDERMAN, JJ., Concur

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

By: /s/ NANCY E. RYALS
Deputy Clerk

ner

CC: Hon. Raymond E. Rhodes,
Clerk
Hon. Charles Ralph Carlton,
Clerk
Hon. Royce Agner, Judge

Virlyn B. Willis, Jr., Esquire
Charles A. Stampelos, Esquire

Supreme Court, U. S.
FILED
JUN 26 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1979
NO. 79-1595

WILLIAM HARRIS SHARPE,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA DISTRICT COURT OF APPEAL, FIRST DISTRICT

JIM SMITH
Attorney General

RAYMOND L. MARKY
Assistant Attorney
General

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IN THE

Supreme Court of the United States

OCTOBER TERM 1979
NO. 79-1595

WILLIAM HARRIS SHARPE,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA DISTRICT COURT OF APPEAL, FIRST DISTRICT

Respondent prays that this Court will deny the petition for writ of certiorari heretofore filed seeking review of the opinion rendered by the First District Court of Appeal.

OPINIONS BELOW

On the 24th day of October, 1977,

the trial court entered an order denying Petitioner's motion to suppress and amended motion to suppress. On the 17th day of April, 1979, the First District Court of Appeal affirmed Petitioner's judgment and sentence. *Sharpe v. State*, 370 So.2d 42 (Fla. 1 DCA 1979), *cert. denied*, 381 So.2d 769 (Fla. 1980). The instant petition followed.

JURISDICTION

The jurisdiction of this Court is sought to be invoked by Petitioner under 28 U.S.C. § 1257(3). It is Respondent's position that the issues raised here are not such as should be reviewed by this Court. Petitioner has not presented this

Court with a substantial federal constitutional question. Review by writ of certiorari is a matter of sound judicial discretion, and will be granted only where there are special and important reasons therefore. *See* Rule 19, *Rules of the Supreme Court of the United States; Ross v. Moffitt,* 417 U.S. 600 (1974).

STATEMENT OF THE CASE

Respondent will rely upon the facts as recited in the opinion rendered by the First District Court of Appeal in *Sharpe v. State,* 370 So.2d 42 (Fla. 1 DCA 1979), *cert.denied,* 381 So.2d 769 (Fla. 1980) wherein the Court stated in part as follows:

The facts are that Sharpe stopped his rental truck at an agricultural inspection station on an interstate highway, but when told by a uniformed inspector that he wished to inspect the vehicle, Sharpe advised that his girlfriend had the key to the lock securing the rear door of the truck and she was driving another vehicle ahead of him on the highway. The inspector asked Sharpe what was in the truck and Sharpe answered that he had some furniture from his girlfriend's apartment. The inspector then requested Sharpe to pull his truck over to the dock and wait. At one point, the inspector suggested that if Sharpe couldn't get the truck open, and if his girlfriend didn't come back, that he could get a hammer for Sharpe to break the lock. Sharpe stated it was a new lock that he didn't want to break. He indicated his girlfriend

would come back. At no time did Sharpe refuse to allow the truck to be searched.

Some minutes later the inspectors noticed that the back of the truck was open and Sharpe was standing next to it. One of the inspectors went over and looked inside the truck and observed furniture and an old motorcycle. Shortly after he entered the back of the truck to look further, he heard another inspector call that Sharpe was gone. Sharpe was seen running across an open field. At that point all inspection of the vehicle was stopped. The inspectors contacted the highway patrol and the sheriff's office. Shortly thereafter, Sharpe was taken into custody. A deputy drove the truck from the inspection station to the jail, where the truck was searched and the cannabis discovered.

Id. at 43. In addition, Nick C. Law, Sr., an agricultural inspector for the Department of Agriculture for the State of Florida, testified regarding Petitioner's flight from the agricultural inspection station (T 66). Mr. Law stated in part as follows:

> Mr. Shope got up in the truck to inspect it and see what was on it, and I was standing on the ground outside, and another truck come up, or something, but anyway, got my attention, and I had to go back inside, and I went inside to take care of that, and while I was sitting there I looked around and Mr. Sharpe was running towards the fence, and I ran out the door, and when I got out the door he had already went over about a five or six foot fence. Ever how high that fence

> is out there, and I just hollered at him, and he paused for a moment and kept on going. Then I went out to the truck and told Mr. Shope that he had left and run to the woods, and I went on back in the station and called the Sheriff's department.

(T 66). Upon hearing the testimony adduced during the hearing held on Petitioner's motion to suppress and amended motion to suppress and upon hearing argument of counsel, the trial court ruled as follows:

> On the authority part of the Department of Agriculture to stop, I think we all agree that is not unconstitutional. After the stop I don't find there was any unlawful detention. I think it was a reasonable amount of time to hold him. They would have the

> right to stop and detain long enough to obtain a search warrant. The RV vehicle, I did not go along with the defense argument on this. I accept the position that the position that the vehicle was abandoned by him leaving it out there at the inspection station. That the subsequent re-uniting at the jail does not give him the standing to come back in and to demand that it not be searched. I think once he has abandoned it out there and they brought it in, the fact that he then is at the jail does not require a search warrant, under the circumstances of this case. This is my position, and I will deny the motion.

(T 110-111).

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

Petitioner objects to a warrantless inspection conducted at an agricultural inspection station on an interstate highway by agricultural inspectors of the Department of Agriculture and Consumer Services pursuant to Section 570.15(1), Florida Statutes (1977) and the subsequent retrieval of contraband contained therein by law enforcement officials.

It is beyond peradventure that "[t]he protection of a large industry constituting one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the state is affected

to such an extent by public interest as to be within the police power of the sovereign. [Citations omitted]." *Johnson v. State*, 99 Fla. 1311, 128 So. 853, 857 (1930). *See also, Sligh v. Kirkwood*, 65 Fla. 123, 61 So. 185 (1913), *aff'd*, 237 U.S. 52 (1915). Agricultural inspectors of the Department of Agriculture and Consumer Services have the authority under Section 570.15(1)(a), Florida Statutes (1977) to stop and inspect *all* trucks, motor vehicles, and trailers other than private passenger automobiles and vehicles bearing an RV license tag. In *Stephenson v. Department of Agriculture and Consumer Services*, 329 So.2d 373 (Fla. 1 DCA 1976), *aff'd*, 342 So.2d 60 (Fla.

1976), *appeal dismissed* for want of a substantial federal question, 434 U.S. 803 (1977), the Supreme Court of Florida held that said inspections are necessary in order that the Department of Agriculture and Consumer Services carry out its responsibilities relating to disease control, fruit and vegetable grading, and other similar matters required by law. In *Stephenson v. Department of Agriculture and Consumer Services, supra,* the First District Court of Appeal opined and the Supreme Court of Florida agreed that:

> "Unless such a vehicle stops at the station, it cannot be determined by the inspectors whether or not it is being used for transportation of 'any food product, any agricultural, horticul-

> tural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.' Upon stopping, the majority of operators of such vehicles will probably have no objection to such an inspection and will consent to same; but as provided in the statute, if access is refused, the vehicle may not be searched without the inspector obtaining a search warrant or without a legal basis for search without a warrant pursuant to established law. Such in no way impairs appellants' right to be free from unreasonable search and seizure, their right to due process of law, or their right to equal protection of the law. We do not find that it violates any constitutional right of appellant."

Stephenson v. Department of Agriculture and Consumer Services, supra, 342 So.2d at

62. In *Delaware v. Prouse*, 440 U.S. 648 (1979), this Court stated that its holding did not "cast doubt on the permissibility of roadside truck weigh-stations and inspection checkpoints, at which some vehicles may be subject to further detention for safety and regulatory inspection than are others." *Id.* at 663, n.26. Petitioner's contention that the agriculture inspectors must limit their inspection of a type truck driven by Petitioner to a few questions and a plain view search is unrealistic and fails to contemplate the impracticality of such limitation. The Petitioner was driving a two-ton Ryder Rental Truck with a large fully enclosed cargo area. Inspector Shope testified

that it was during the height of the fruit and tomato season and that such rental trucks are frequently used to haul fruit and tomatoes. The nature of the truck completely precludes any plain view inspection and therefore, it was necessary for the inspector to look inside the truck's cargo area in order to perform his duty to inspect for agricultural products. There is no other way to accurately determine if such a truck is being used in the transportation of agricultural products. As a result, Petitioner's detention at the road-guard station was reasonable, especially in light of Petitioner's indication that his girlfriend was ahead of him in a car and would probably return with the key to

the lock on the truck. *See United States v. Schaffer*, 461 F.2d 856 (9th Cir. 1972), *cert.denied*, 409 U.S. 81 (1972); *State v. Bailey*, 120 Ariz. 399, 586 P.2d 648 (Ct. App. 1978).

Petitioner's contention that the inspection of his truck was without his valid consent is without merit. As noted by the First District Court of Appeal, "[a]t no time did Sharpe refuse to allow the truck to be searched." *Sharpe v. State*, *supra*, at 43. *See e.g.*, (T 43). In addition, it is Respondent's position that Petitioner opened the truck of his own volition with no inspectors in his immediate vicinity and made no objection to the inspector entering the back of the truck.

See e.g., (T 56). As a result, it is Respondent's position that Petitioner consented to the inspection of his truck. *Cf. Marshall v. Barlow's, Inc.*, 436 U.S. 307, 314 (1978) and *Pederson v. State*, 373 So.2d 367 (Fla. 1 DCA 1979), *cert.denied*, ____ So.2d ____ (Fla. 1980) with *Sharpe v. State, supra.*

Next, Petitioner's contention that the search of the truck at the jail was an unlawful search and seizure is without merit. *Sub judice*, the trial court specifically found that Petitioner abandoned his truck at the roadguard station (T 111). The First District Court of Appeal agreed. *Sharpe v. State, supra*, at 45. The testimony of Agricultural Inspectors

Shope and Law supports said finding. *See* (T 39-41; 58-59; 66-67). In *Hester v. United States*, 265 U.S. 57 (1924), this Court held that revenue officers had properly retrieved several containers of illegally distilled whiskey which they had seen the defendant discard in an open field as he was attempting to flee from the federal officers. In *Abel v. United States*, 362 U.S. 217 (1960), this Court upheld the seizure of contents from a wastepaper basket found in the defendant's hotel room immediately after he had paid his bill and had vacated the room. Similarly, in *United States v. Edwards*, 441 F.2d 749 (5th Cir. 1971), a highway patrolman attempted to stop the defendant

for speeding only to have the defendant increase his speed to over 100 miles an hour. In attempting to make a turn, the defendant's car left the road and became enlodged in a ditch. Edwards jumped out of the car, left the engine running and the lights burning, and fled on foot. The officer took the keys and upon opening the trunk found three gallons of illegal whiskey. Edwards was arrested the following day at his place of employment. Judge Roney, writing for the Court, stated, in part, as follows:

> Defendant's right to Fourth Amendment protection came to an end when he abandoned his car to the police, on a public highway, with engine running, keys in the ignition, lights on, and fled on

> foot. At that point defendant could have no reasonable expectation of privacy with respect to his automobile.

Id. at 751. *See also, United States v. Walton,* 538 F.2d 1348, 1354 (8th Cir. 1976), *cert. denied,* 429 U.S. 1055 (1976). Flight is usually considered to exist when the accused departs from the vicinity of the crime. *Mackiewicz v. State,* 114 So.2d 684, 689 (Fla. 1959); *Noeling v. State,* 40 So.2d 120, 121 (Fla. 1949). Based upon the foregoing, it is Respondent's position that the record sustains the finding of the trial court and the First District Court of Appeal that Petitioner fled from the agricultural inspection station and as a result, intended to abandon his truck.

The subsequent impoundment of the abandoned truck was reasonable and the seizure of the evidence contained therein, not improper. *See South Dakota v. Opperman*, 428 U.S. 364 (1976); *Godbee v. State*, 224 So.2d 441 (Fla. 2d DCA 1969).

Finally, it should be noted that the instant case involves an agricultural inspection, *United States v. Brignoni-Ponce*, 422 U.S. 873, 887 (1975) (Rehnquist, J., concurring), which is a routine inspection of certain vehicles required as a condition of road use. *United States v. Ortiz*, 422 U.S. 891, 897 (1975), n.3. The stop and inspection of Petitioner's vehicle is consistent with *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976). *See*

Stephenson v. Department of Agriculture and Consumer Services, 342 So.2d 60, 62 (Fla. 1976) (Hatchett, J., concurring). Moreover, the subsequent retrieval of the contraband contained therein was reasonable, especially in light of Petitioner's flight from the agricultural inspection station and Petitioner's abandonment of the vehicle. Petitioner enjoyed no reasonable expectation of privacy with respect to his automobile subsequent thereto. Consequently, the trial court's denial of Petitioner's motion to suppress and amended motion to suppress was proper and properly sustained by the record and affirmed by the First District Court of Appeal. *See United States v. Mendenhall*, 48 U.S.L.W.

4575, 4579 (1980); *McNamara v. State*, 357 So.2d 410 (Fla. 1978).

CONCLUSION

Based upon the foregoing, supported by the authorities cited in the argument and jurisdictional portions of this Brief, Respondent respectfully requests that this Court decline to assume jurisdiction in this case and deny Petitioner's application for issuance of a writ of certiorari.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I, RAYMOND L. MARKY, *Counsel for Respondent*, and a member of the Bar of the United States, hereby certify that on the ____ day of June, 1980, I served copies of the Respondent's Brief in Opposition to the Petition for Writ of Certiorari on Mark J. Kadish, Esq., of Garland, Nuckolls, Kadish, Martin & Catts, P.C., at 1012 Candler Building, 127 Peachtree Street, Atlanta, Georgia 30303, *Counsel for Petitioner*, by a duly addressed envelope with postage prepaid.

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